

UNIVERSITY OF MACAU

Faculty of Law

*Jean Monnet Seminar*

13. May 2011

***The EUROPEAN UNION:  
Creative Economy -- Destructive Politics?***



Rene G. Magritte, *Le Pont d'Héraclite* (1935)

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**PART I**

# **CREATIVE ECONOMY**



**CREATIVE**

创意

**ECONOMY**

经济

**CULTURE**

文化

**INDUSTRY**

产业

**INTELLECTUAL**

智慧

**PROPERTY**

财产

**CO-O**

合作性

**PETITION**

竞争

**G (LO)**

全球

**LOCALISATION**

本地化

**COMPETITION**

竞争

**LAW**

法



售价 1.4 亿美元

**Jackson Pollock, *No 5, 1948***

**Sold at 140 Million US\$**

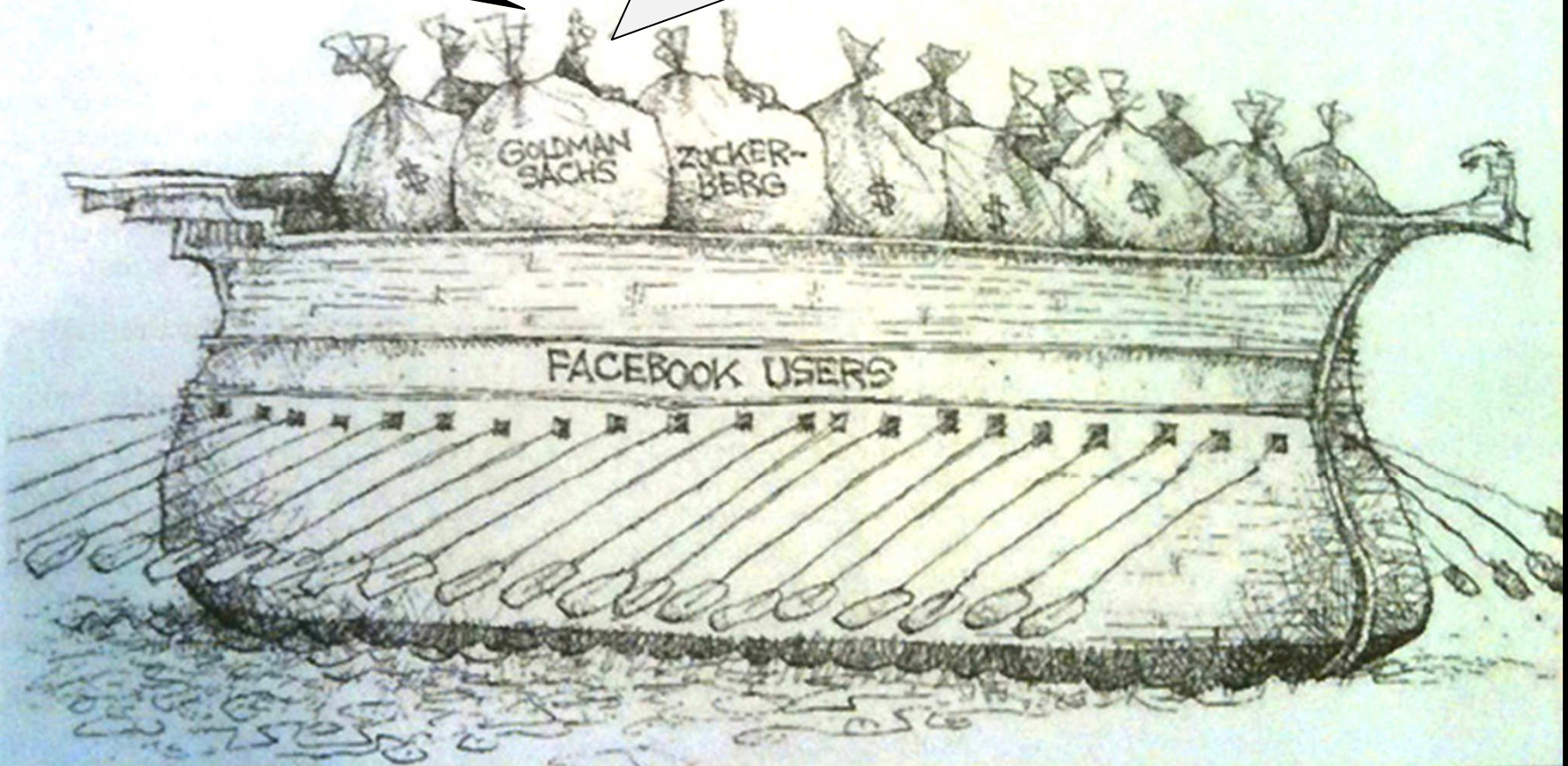


估值 500 亿美元

**Valued at 50 Billion US\$**

它们不是免费服务么？

*And they work  
for free, you say?*



# 创意经济

# The Creative Economy

Economic Offering 经济提供物	Commodities 产品	Goods 商品	Services 服务	Experiences 体验
Economy 经济类型	<i>Agrarian</i> 农业经济	<i>Industrial</i> 工业经济	<i>Service</i> 服务经济	<i>Experience</i> 体验经济
Economic Function 经济运行方式	<i>Extract</i> 采掘提炼	<i>Make</i> 制造	<i>Deliver</i> 提供	<i>Stage</i> 展示
Nature of Offerings 提供物性质	<i>Fungible</i> 可替代的	<i>Tangible</i> 有形的	<i>Intangible</i> 无形的	<i>Memorable</i> 可累积的
Key Attribute 核心属性	<i>Natural</i> 自然的	<i>Standardized</i> 标准定式的	<i>Customized</i> 订制的	<i>Personal</i> 个性化的
Method of Supply 供应方式	<i>Stored</i> 大批存储	<i>Inventoried</i> 生产后库存	<i>Delivered</i> 按需提供	<i>Revealed</i> 揭示
Seller 供方	<i>Trader</i> 交易商	<i>Manufacturer</i> 制造商	<i>Provider</i> 服务提供方	<i>Stager</i> 展示者
Buyer 需方	<i>Market</i> 市场	<i>User</i> 用户	<i>Client</i> 客户	<i>Guest</i> 接受方
Factors of Demand 需求要素	<i>Characteristics</i> 特点	<i>Features</i> 特色	<i>Benefits</i> 利益	<i>Sensations</i> 感受

# The Creative Economy

## *Synonyms*

<b>INFORMATION SOCIETY</b>	<b>KNOWLEDGE-BASED ECONOMY</b>
<b>CREATIVE SOCIETY</b>	<b>CULTURAL ECONOMY</b>
<b>DREAM SOCIETY</b>	<b>EXPERIENCE ECONOMY</b>

The concept “**experience economy**” builds on the idea that in the near future, people would be willing to allocate high percentages of their salaries in order to have amazing life experiences. Their desire for emotional experiences would be linked to the consumption of creative products and services that should be highly specified and differentiated, as compared to a simple commodity business.

# CREATIVE ECONOMY: THE WORLD

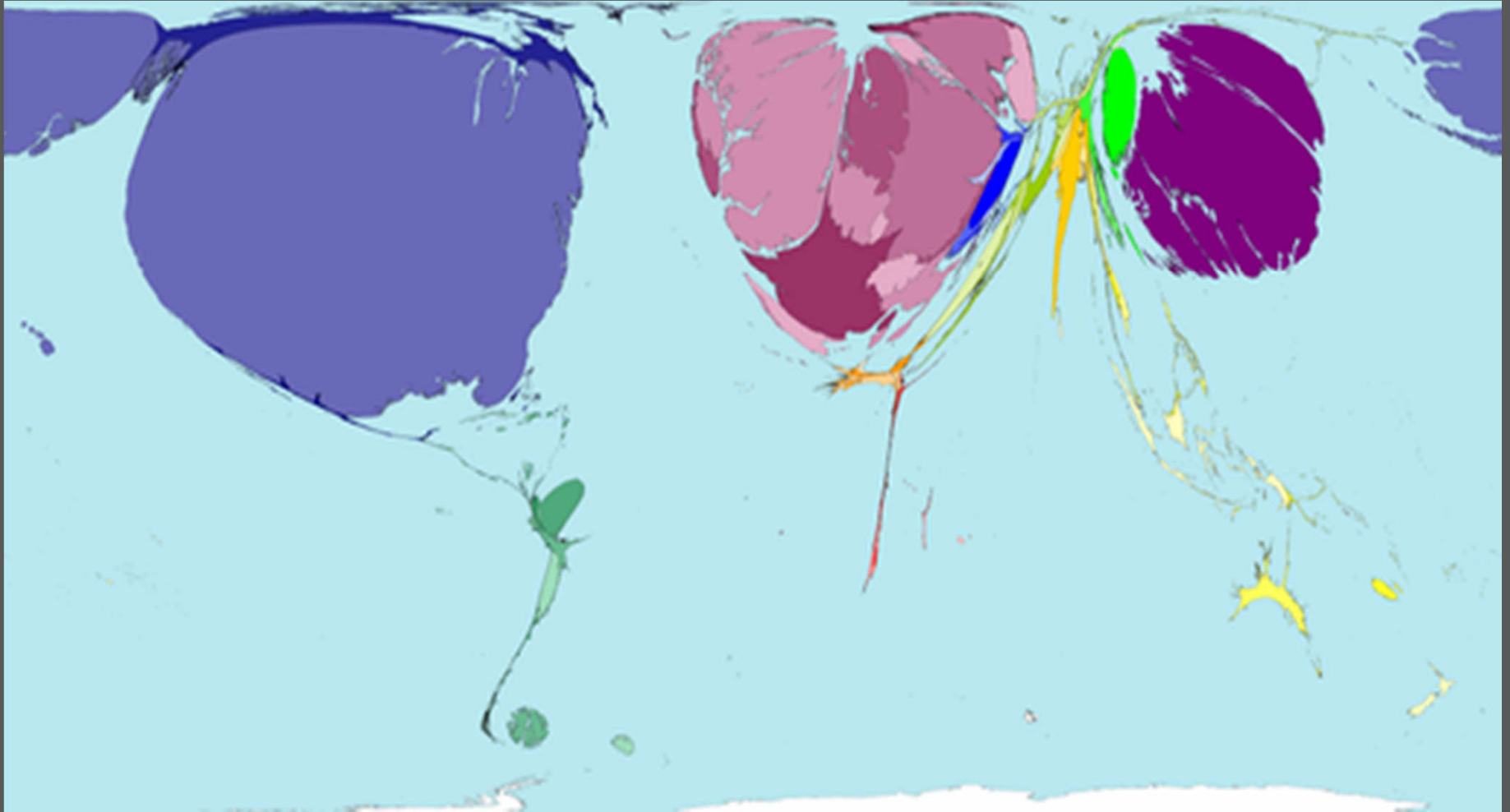
## UNCTAD definition of the creative economy

- The “creative economy” is an evolving concept based on creative assets potentially generating economic growth and development.
- It can foster income generation, job creation and export earnings while promoting social inclusion, cultural diversity and human development.
- It embraces economic, cultural and social aspects interacting with technology, intellectual property and tourism objectives.
- It is a set of knowledge-based economic activities with a development dimension and cross-cutting linkages at macro and micro levels to the overall economy.
- It is a feasible development option calling for innovative, multidisciplinary policy responses and interministerial action.
- At the heart of the creative economy are the creative industries.



# CREATIVE ECONOMY: THE WORLD

## World Map – ROYALTY FEES



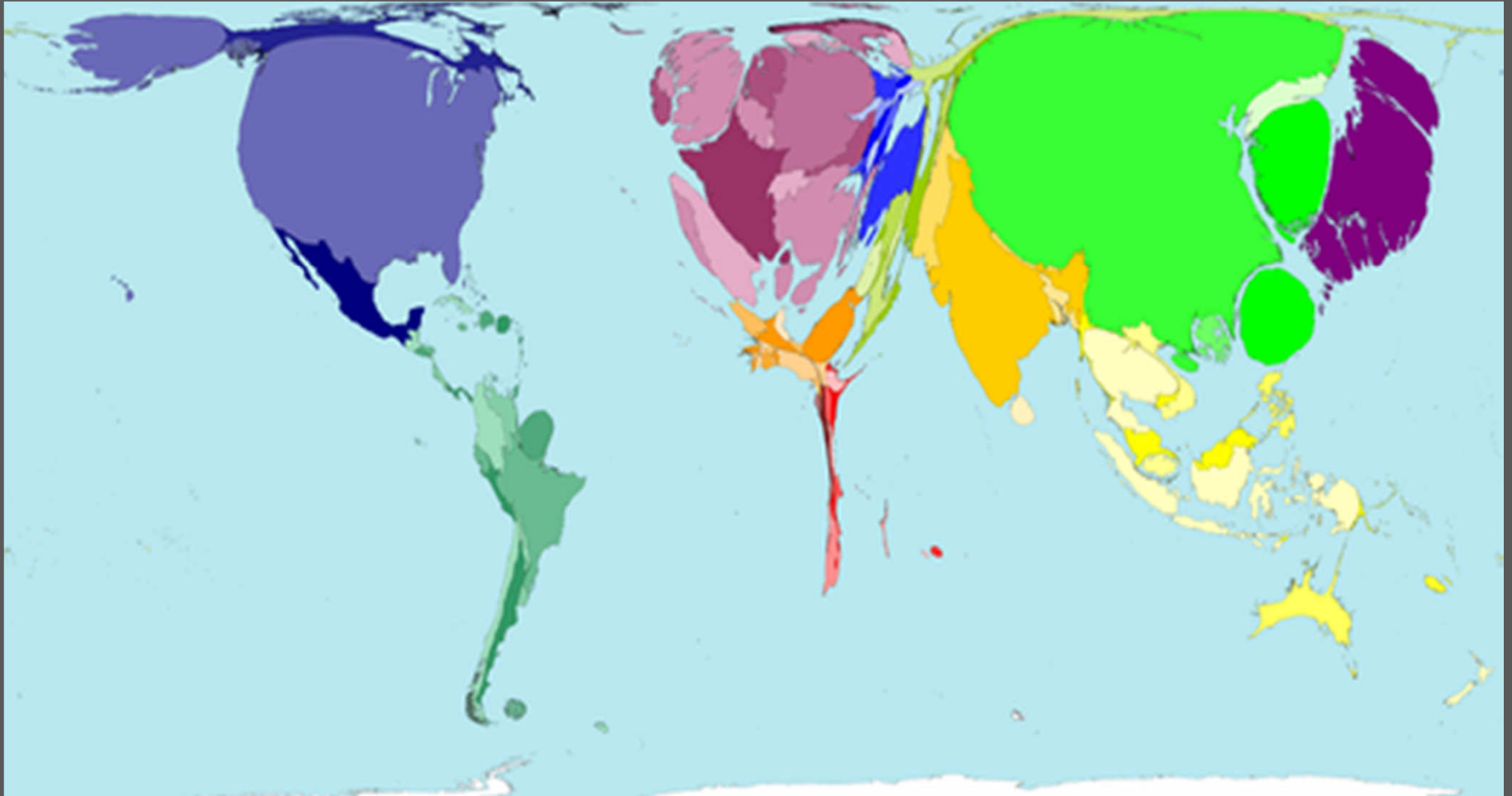
# CREATIVE ECONOMY: THE WORLD

## World Map – HUMAN POVERTY



# CREATIVE ECONOMY: THE WORLD

## World Map – Wealth 2015

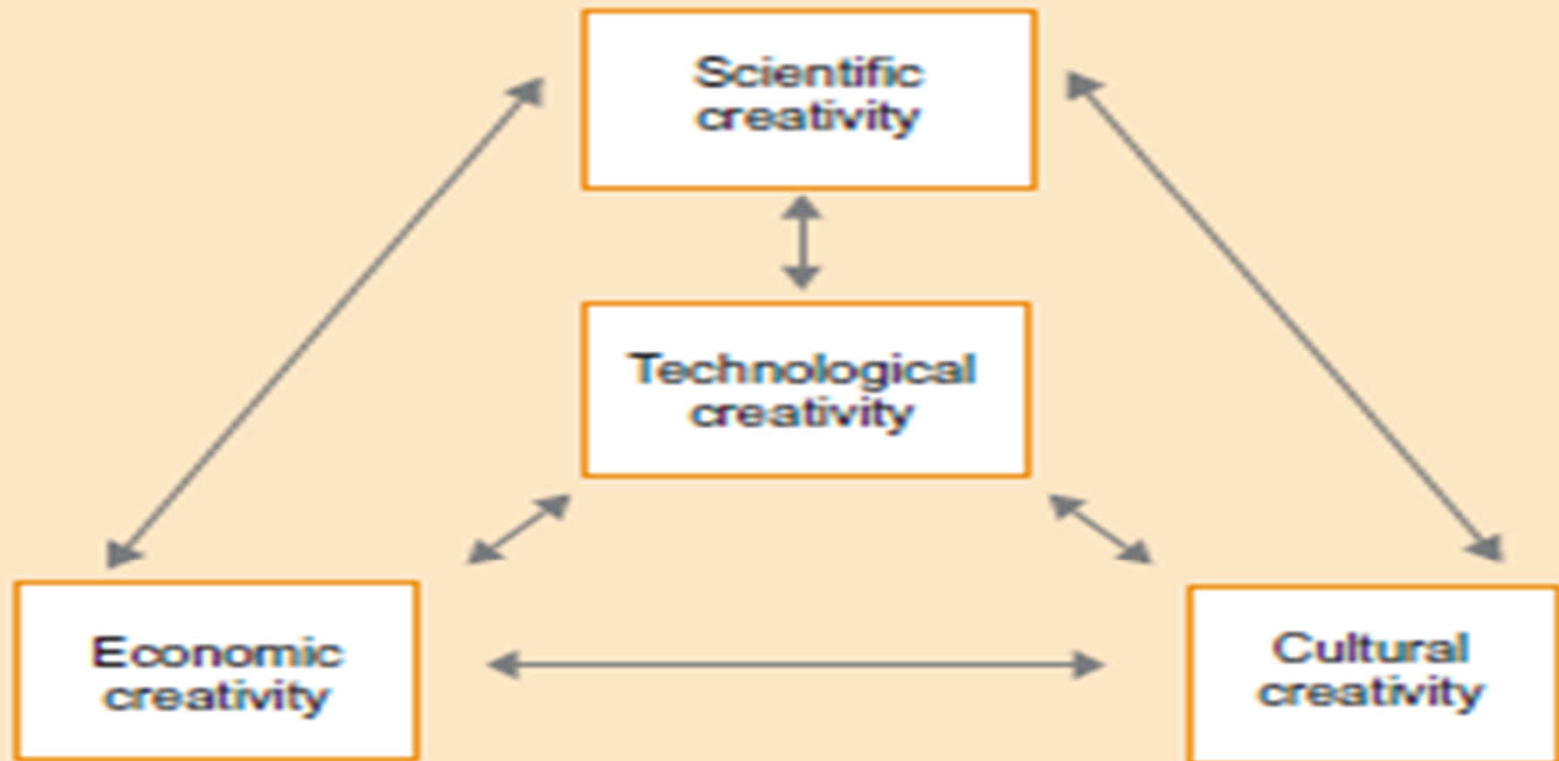


# CREATIVE ECONOMY: THE WORLD

## UNCTAD World Creative Economy Report 2010 (2008)

Figure 1.1

Creativity in today's economy

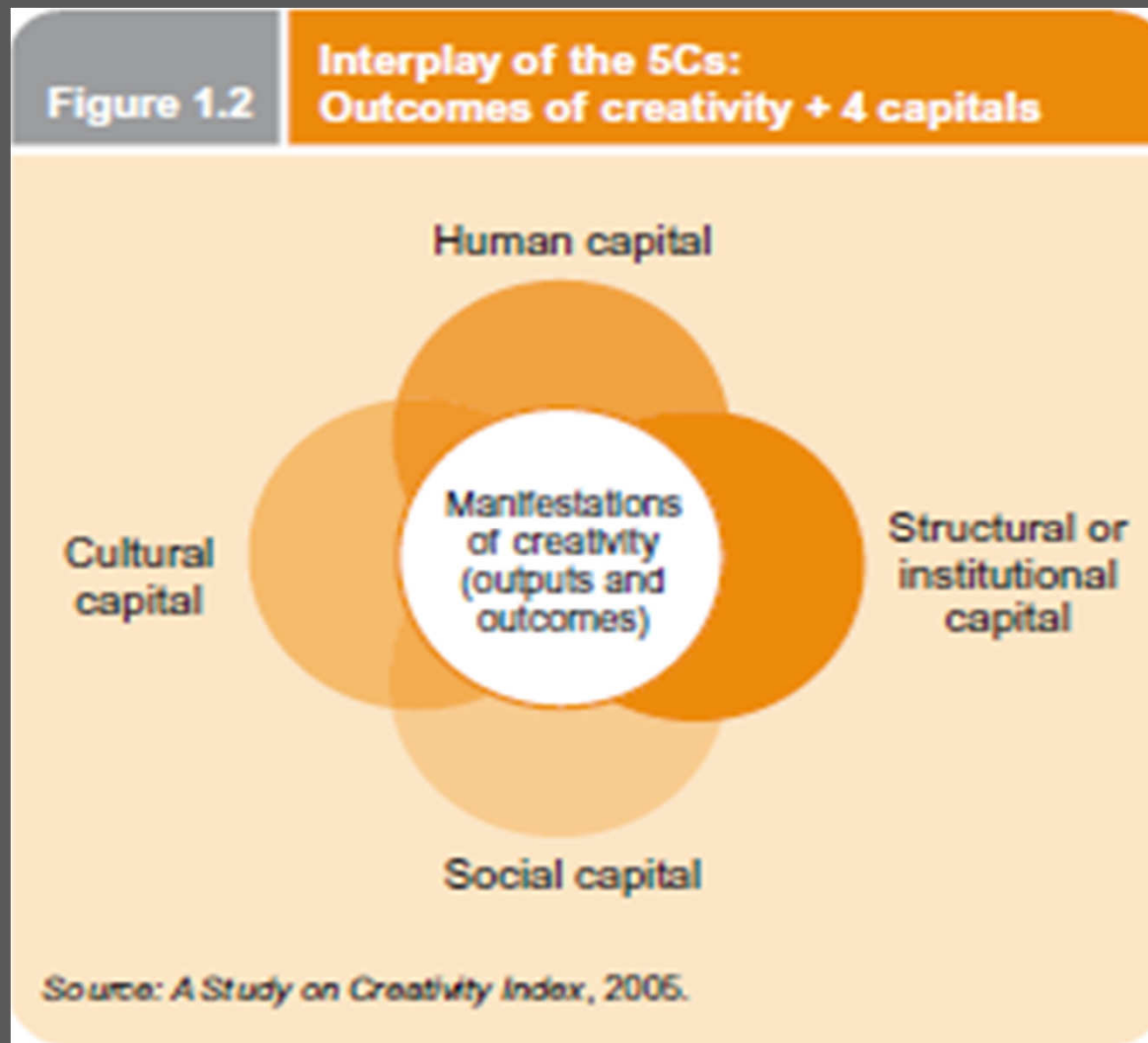


Source: KEA European Affairs (2006:42).



# CREATIVE ECONOMY: THE WORLD

## UNCTAD World Creative Economy Report 2010 (2008)



# CREATIVE ECONOMY: THE WORLD

## UNCTAD World Creative Economy Report 2010 (2008)

Table 1.1

Classification systems for the creative industries derived from different models

1. UK DCMS model	2. Symbolic texts model	3. Concentric circles model	4. WIPO copyright model
Advertising Architecture Art and antiques market Crafts Design Fashion Film and video Music Performing arts Publishing Software Television and radio Video and computer games	<b>Core cultural industries</b> Advertising Film Internet Music Publishing Television and radio Video and computer games  <b>Peripheral cultural industries</b> Creative arts  <b>Borderline cultural industries</b> Consumer electronics Fashion Software Sport	<b>Core creative arts</b> Literature Music Performing arts Visual arts  <b>Other core cultural industries</b> Film Museums and libraries  <b>Wider cultural industries</b> Heritage services Publishing Sound recording Television and radio Video and computer games  <b>Related industries</b> Advertising Architecture Design Fashion	<b>Core copyright industries</b> Advertising Collecting societies Film and video Music Performing arts Publishing Software Television and radio Visual and graphic art  <b>Interdependent copyright industries</b> Blank recording material Consumer electronics Musical instruments Paper Photocopiers, photographic equipment  <b>Partial copyright industries</b> Architecture Clothing, footwear Design Fashion Household goods Toys



# CREATIVE ECONOMY: EU





# CREATIVE ECONOMY: EU

CIRCLES	SECTORS	SUB- SECTORS	CHARACTERISTICS
CORE ARTS FIELD	Visual arts	Crafts Paintings – Sculpture – Photography	<ul style="list-style-type: none"> <li>• Non industrial activities.</li> <li>• Output are prototypes and "potentially copyrighted works" (i.e. these works have a high density of creation that would be eligible to copyright but they are however not systematically copyrighted, as it is the case for most craft works, some performing arts productions and visual arts, etc).</li> </ul>
	Performing arts	Theatre - Dance – Circus - Festivals.	
	Heritage	Museums – Libraries - Archaeological sites - Archives.	
CIRCLE 1: CULTURAL INDUSTRIES	Film and Video		<ul style="list-style-type: none"> <li>• Industrial activities aimed at massive reproduction.</li> <li>• Outputs are based on copyright.</li> </ul>
	Television and radio		
	Video games		
	Music	Recorded music market – Live music performances – revenues of collecting societies in the music sector	
	Books and press	Book publishing - Magazine and press publishing	
CIRCLE 2: CREATIVE INDUSTRIES AND ACTIVITIES	Design	Fashion design, graphic design, interior design, product design	<ul style="list-style-type: none"> <li>• Activities are not necessarily industrial, and may be prototypes.</li> <li>• Although outputs are based on copyright, they may include other intellectual property inputs (trademark for instance).</li> <li>• The use of creativity (creative skills and creative people originating in the arts field and in the field of cultural industries) is essential to the performances of these non cultural sectors.</li> </ul>
	Architecture		
	Advertising		
CIRCLE 3: RELATED INDUSTRIES	PC manufacturers, MP3 player manufacturers, mobile industry, etc...		<ul style="list-style-type: none"> <li>• This category is loose and impossible to circumscribe on the basis of clear criteria. It involves many other economic sectors that are dependent on the previous "circles", such as the ICT sector.</li> </ul>

: "the cultural sector"  
 : "the creative sector"



# Culture in Other Policies

- **Art. 167 LT (ex Article 151 (4) TEC) integrates “culture” into the broader policy-making framework:**
- **■ CITIZENSHIP: Projects under the EU’s Citizenship program (dialogue between different cultures in Europe & European identity).**
- **■ EDUCATION: EU’s educational policies (Socrates programme and its predecessors have supported educational or training projects in the cultural field, and this will be continued under the Lifelong Learning programme).**
- **■ YOUTH IN ACTION PROGRAM: seeks to promote linguistic and cultural diversity.**
- **■ EU’s STRUCTURAL FUNDS: support for projects contributing to the development and social cohesion of the territory.**
- **■ COMMON AGRICULTURAL POLICY (CAP): The rural development aspect of the Common Agricultural Policy has a cultural dimension under the ‘Leader +’ initiative to help rural communities make the best use of natural and cultural resources.**

# Culture in Other Policies

- ■ AUDIOVISUAL PRODUCTS: Audiovisual works are a crucial channel for the transmission of our cultural, social and democratic values. The Audiovisual Media Services (AMS) Directive & MEDIA program.
- ■ INFORMATION TECHNOLOGY: Information technology has an important role in making cultural information widely accessible. In August 2006, a Commission Recommendation on the digitisation and on-line accessibility of cultural material and digital preservation was adopted.
- ■ RESEARCH: The 7th Framework Program for Research (FP7) also supports culture directly and indirectly through its various specific programmes, in particular in the realm of the social sciences and humanities.
- ■ INTELLECTUAL PROPERTY RIGHTS (IPRs): Last but not least, there is also a strong link between the promotion of culture and creativity and EU copyright and related rights legislation, as well as the rules governing state aid.
- ■ CULTURAL DIVERSITY

# CREATIVE ECONOMY: EU

## GREEN PAPER

### Unlocking the potential of cultural and creative industries

COM(2010) 183 final (Brussels, 27.4.2010 )

- **MAIN DRIVERS FOR THE FURTHER DEVELOPMENT OF CCIS: CULTURAL DIVERSITY, THE DIGITAL SHIFT AND GLOBALIZATION**
- **LOCAL AND REGIONAL DEVELOPMENT AS A LAUNCHPAD FOR GLOBAL SUCCESS**
- **Mobility and the circulation of cultural and creative works**
- **Cultural exchanges and international trade (exception culturelle)**
- **TOWARDS A CREATIVE ECONOMY: THE SPILLOVERS OF THE CCIS**
- **The key question here is how to accelerate the positive spill-over effects that culture and CCIs can produce on the wider economy and society?**

# CREATIVE ECONOMY: EU

## COMMUNICATION FROM THE COMMISSION

### EUROPE 2020

A strategy for smart, sustainable and inclusive growth

- **The 5 targets for the EU in 2020**

#### **1. Employment**

- **75% of the 20-64 year-olds to be employed**

#### **2. R&D / innovation**

- **3% of the EU's GDP (public and private combined) to be invested in R&D/innovation**

#### **3. Climate change / energy**

- **greenhouse gas emissions 20% (or even 30%, if the conditions are right) lower than 1990**
- **20% of energy from renewables**
- **20% increase in energy efficiency**

#### **4. Education**

- **Reducing school drop-out rates below 10% at least 40% of 30-34-year-olds completing third level education**

- **5. Poverty / social exclusion at least 20 million fewer people in or at risk of poverty and social exclusion**



# CREATIVE ECONOMY: MACAU



# CREATIVE ECONOMY: MACAU

- **We will enhance regional cooperation between Guangdong, Hong Kong and Macao to pursue win-win situations that will provide more favourable conditions for adequate diversification of the economy, achieving the objective of sustainable development of Macao's society and economy.**
- **Building on the last 10 years' foundation, the third MSAR Government will continue promoting Macao to new heights of development, through adequate allocation of resources on the basis of pragmatism, steadfast determination, and scientific policy-making. We will put people first, heed public opinion, and maintain clean administration as well as the rule of law, to promote adequate diversification of the economy and build an inclusive and harmonious society.**
- **The trend towards sustainable development of modern cities around the world has changed from focusing solely on economic development to pursuing coordinated development in economic, social, cultural and environmental aspects, so people find their lives, work and living environments satisfactory.**

# CREATIVE ECONOMY: MACAU

- **Technological development is an important driving force in promoting Macao's economic development, productivity and the quality of life of Macao people.**
- **Society's rapid development accelerates growth of the economy.**
- **We will endeavour to develop Macao into a peaceful and hospitable city, featuring a unique blend of Chinese and western cultures, and attracting tourists from around the world.**
- **The Government will not only strengthen development of the tourism sector, but also control the pace and scope of the gaming industry's development. We will foster its proper, orderly and regulated development, accelerate perfection of the related laws and regulations, and effectively leverage the gaming industry's leading role, to promote the development of other industries. The nascent industries that we support as the new engines to boost the economy are the convention and exhibition industry, cultural and creative industries, traditional Chinese medicine, and commerce and trade services.**

# MACAU CREATIVE ECONOMY

- **In the process of promoting adequate diversification of the economy, the Government will earmark more resources to support the development of Macao's cultural and creative industries. We will support creative works of local culture. We will study ways to strengthen measures for preserving cultural works of outstanding artistic value that feature local customs and traditions, and can enrich our cultural heritage.**
- **study the feasibility of establishing a cultural and creative industry fund, to practically boost the development of Macao's cultural and creative industries through a combination of new policies and material support.**
- **Facing future opportunities and challenges, in addition to reinforcing the existing public administration system and expanding measures for reforming public administration, the Government will gradually establish a more scientific, open and democratic decision-making process, and prioritise public interests to implement the administration tenet of "Sunshine Government".**
- ***"Looking Ahead Without Losing Track of the Present"***



# CREATIVE ECONOMY: CHINA

盜版假冒 vs. 创意经济

Piracy & Counterfeit vs. Creative Economy



*China Daily,*

[http://www.chinadaily.com.cn/english/doc/2006-02/06/xin\\_540203060907146193820.jpg](http://www.chinadaily.com.cn/english/doc/2006-02/06/xin_540203060907146193820.jpg)



**The Diamond Sutra,**  
printed in the 9th year of Xiantong Era of the Tang  
Dynasty, i.e. 868 CE. (British Library, London).

# CREATIVE ECONOMY: CHINA

## Outline of the National Intellectual Property Strategy

(Issued by the State Council of the People's Republic of China on June 5, 2008)

**This Outline is formulated for the purpose of improving China's capacity to create, utilize, protect and administer intellectual property, making China an innovative country and attaining the goal of building a moderately prosperous society in all respects.**

(1) Since the reform and opening up policy was introduced, China has maintained a **sustainable and rapid economic and social development**, and has made advances in science and technology and cultural creations, while the capacity for **innovation** has been constantly improved, and knowledge is playing an increasingly prominent role in China's economic and social development. China is now experiencing a new historical beginning, and it is of great strategic importance for the country to develop and utilize knowledge-based resources in order to transform the pattern of economic development, ease the constraints posed by demand for resources and environmental concerns, improve the nation's **core competitiveness** and meet the increasing **material and cultural demands of the people**.

# CREATIVE ECONOMY: CHINA

## Outline of the National Intellectual Property Strategy

(Issued by the State Council of the People's Republic of China on June 5, 2008)

- (6) By 2020, China will become a country with a comparatively high level in terms of the **creation, utilization, protection and administration of IPRs**. The legal environment for IPRs is much better, market entities are much better at the creation, utilization, protection and administration of IPRs, the public awareness of intellectual property is increased greatly, the quality and quantity of the self-relied intellectual property are able to effectively support the effort to **make China an innovative country**, the role of the intellectual property system in promoting economic development, **the culture prosperity** and social progress in China become very apparent.
- 10) [...] **Coordination and uniformity between intellectual property policy and policies of culture, education, science and health** need to be strengthened to safeguard the right of the public to legally and rationally utilize innovation findings and information in their cultural, educational, scientific and public health activities, promote the fair sharing of innovation and information, and ensure that the government is able to deal with public crises.
- 12 [...] Encourage the public to take part in innovations and **cultural creations**. Promote the **creation of excellent cultural products**.

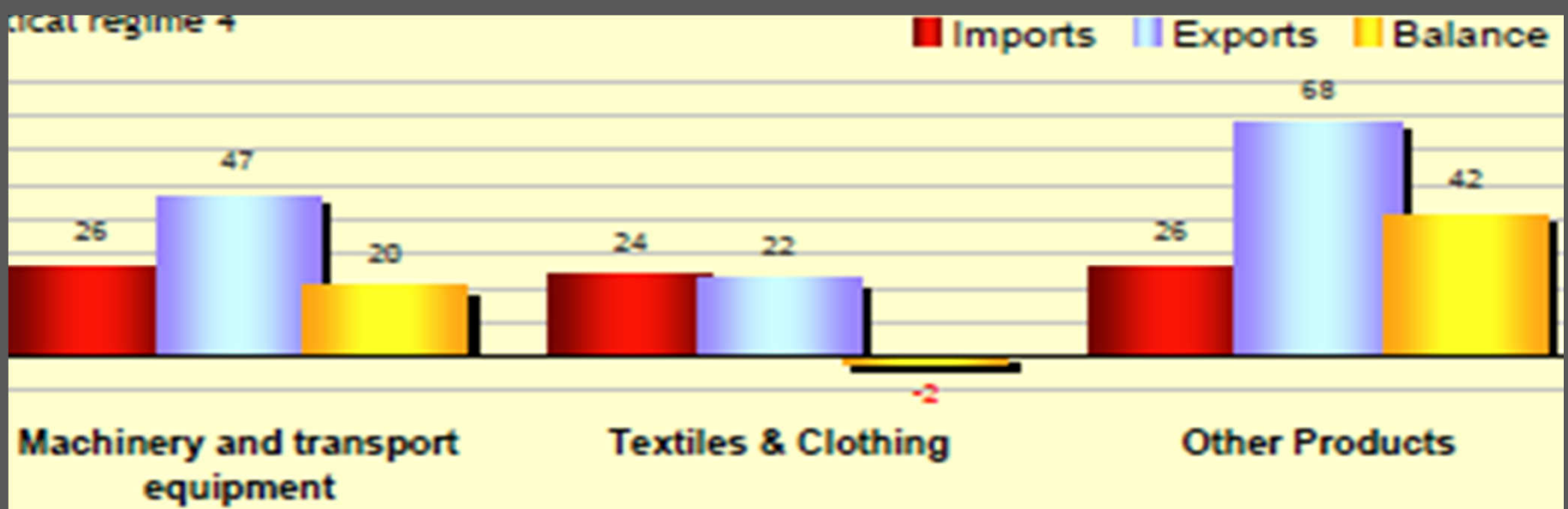
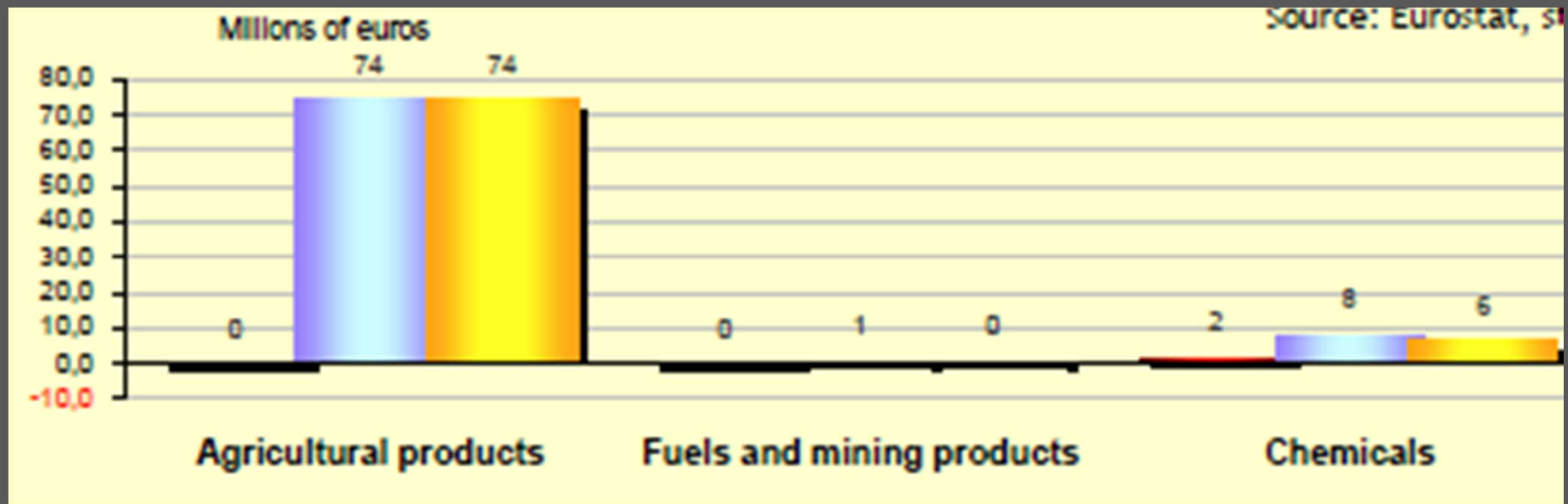
# CREATIVE ECONOMY: EU & CHINA

Economic data	EU	China
Turnover	More than € 654 billion in 2003	€ 47.6 billion in 2006
Value added to GDP	2.6% of EU GDP in 2003	2.45% of GDP in 2006
Employment	In 2004, almost 6 million people were employed = 3.1% of total employed population in EU27	In 2006, 11.32 million employed = 1.48% of total employed population
Trade	The export of cultural services from the EU 27 to China has increased, growing from € 31 million in 2004 to € 49 million (+58%)	China has become the third largest exporter (€ 3.7 billion) and the sixth largest importer (€ 2.2 billion) of cultural goods in the world in 2005
Contribution to growth	12.3% higher than growth of the general economy	6.4% higher than growth of the general economy

*Mapping the Cultural and Creative Sectors in the EU and China: A Working Paper in support to the development of an EU-China Cultural and Creative Industries' (CCIs) platform, EU-CHINA IPR2 (January 2011).*



# CREATIVE ECONOMY: EU & MACAU



# CREATIVE ECONOMY: EU & MACAU

## JOINT REPORT TO THE EUROPEAN PARLIAMENT AND THE COUNCIL *ANNUAL REPORT MACAO 2010*

COM(2011) 205 final (Brussels, 14.4.2011)

*“The Macao SAR Government continued its efforts to diversify the economy. The government vowed to tame excessive casino growth by limiting the number of casinos, gaming tables and slot machines. The goal is to establish Macao as an international conference hub, further developing the MICE (Meetings, Incentives, Conventions and Exhibitions) industry, as well as creative and cultural industries. Dedicated industry committees have been set up to formulate policy actions and identify partners for cooperation”.*

**PART II**

**DESTRUCTIVE POLITICS?**

# Destructive Politics $\neq$ Destructive Politics

***“But what experience and history teach is this, – that peoples and governments never have learned anything from history, or acted on principles deduced from it”.***

Georg W.F. Hegel, *Lectures on the Philosophy of History* (London: Henry G. Bohn, 1861) at 6.



# Forms of Destructive Politics

- **Legislative Activism**
- **Lobbying**
- **Abuse of (the Value of) Direct Democracy**
- **Overregulation (Flood of Norms)**
- **Fiscal Excess and Inertia to tackle Fiscal Reform**
- **Party Politics (Anti-Meritocracy) – political groups**
- **Corruption**
- **“Daily politics”; Short-term benefits (no legislative period is completed)**
- **Nationalism, Racism & Xenophobia**
- **No Integrated National and European Education Policy**
- **No Vision**

# Results of Destructive Politics

- **No Constitutional Treaty**
- **No Institutional Reform (Agencies, Organs)**
- **Exceptions (Europe *a la Carte* – Charter/Euro/Schengen)**
- **Budget – Autonomous Financial Resources – Financial Transaction Tax**
- **No European Parties – Uniform Electoral System for EP Elections**
- **Voluntary Withdrawal Clause**
- **Transitional Exceptions to Free Movement (up to 7yrs)**

**PART III**

**SYNTHESIS**

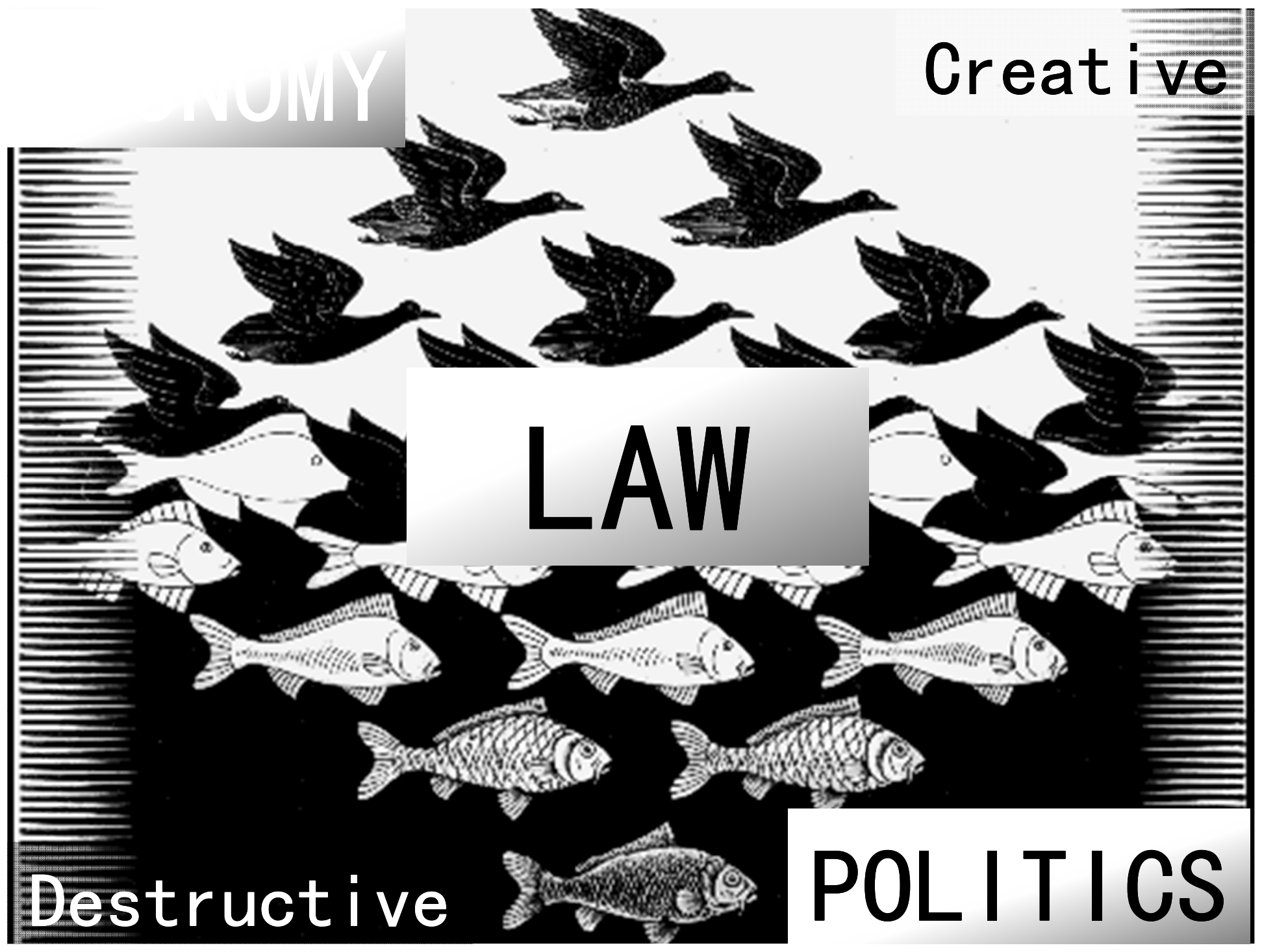
ANOMY

Creative

LAW

Destructive

POLITICS



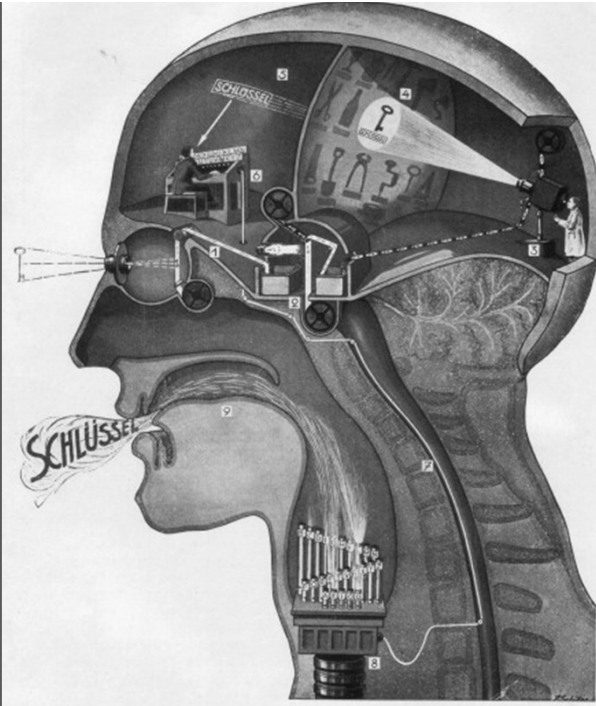


# Creative Destruction

*Situations emerge in the **process of creative destruction** in which many firms may have to perish that nevertheless would be able to live on vigorously and usefully if they could weather a particular storm. Short of such general crises or depressions, sectional situations arise in which the rapid change of data that is characteristic of that process so disorganizes an industry for the time being as to inflict functionless losses and to create avoidable unemployment. Finally, there is certainly **no point in trying to conserve obsolescent industries indefinitely**; but there is point in trying to **avoid their coming down with a crash** and in attempting to turn a rout, which may become a center of cumulative depressive effects, into orderly retreat.*

Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper, 1942) at 90.

从针孔相机到电影摄录机到当下的电脑，新的科技已暗喻了大脑思维的过程。



From the *camera obscura* through the "*cinematograph*" and now the *computer*, new technologies have provided metaphors for understanding how the mind works.

# (放宽) 管制

# (DE-)REGULATION

**Consumer Protection Law**  
消费者保护法

**Private International Law**  
国际私法

**Private Law**  
私法

**Contract Law**  
合同法

**Civil Law**  
民法

**Arbitration**  
仲裁

**Entertainment Law**  
娱乐业法

**International Law** 国际法

**Human Rights Law**  
人权法

**International Trade Law**  
国际贸易法

**Intellectual Property Law**  
知识产权法

**Investment Law**  
投资法

**Competition Law**  
竞争法

**Tax Law**  
税法

**Domestic Law** 国内法

**Cultural Heritage Law**  
文化遗产法

**Intangible Cultural Heritage Law**  
非物质文化遗产法

**Public Law**  
公法

**Finance Law**  
金融法

**Environmental Law**  
环境法

**Health Regulations**  
卫生条例

**Tourism Regulations**  
旅游行业规则

# Creative De-regulation

Cultural workers will be among the first to benefit from freedom of trade in works of art and cultural goods in general. Artists in the plastic arts will be able to exhibit their works in Community countries other than their own with a minimum of formalities and at very little expenses. Actors, musicians and film directors will enjoy the same advantages when they travel with their scenery, instruments, or equipment. The aim is to solve what is both a **practical and a psychological problem**: in practical terms, formalities still required at internal Community frontiers are time-consuming and expensive and the deposits which must still be paid can often be substantial; psychologically, cultural workers and organizers of cultural events, including exhibitions, will not feel they are living in a Community until they can move works of art and equipment from one country to another almost as easily and as cheaply as between the two towns in the same country.

# Creative De-regulation

There is no pretension to exert a **direct influence on culture** itself or to launch a **European cultural policy**; what a stronger Community action in the cultural sector means in effect is linking its four constituents – **free trade in cultural goods**, improving the **living and working conditions of cultural workers**, widening the **audience** and **conserving the architectural heritage** – more closely to the economic and social roles which the Treaty assigns to the Community, to the resources – mainly legislative – that it provides, and to the various Community policies (vocational training, social and regional policies).



# All or Nothing?

*The current period could therefore be characterised as one searching for a holistic model wherein both cultural and economic considerations can be properly represented and policies can be developed which balance the multiple economic, cultural, social, environmental and other objectives of urban development, and which assert a role for local cultural differentiation in a globalising international economy.*

D. Throsby, *Economics and Culture* (Cambridge: Cambridge University Press, 2001) at 126.

凿户牖以为室，当其无，有室之用。  
故有之以为利，无之以为用。

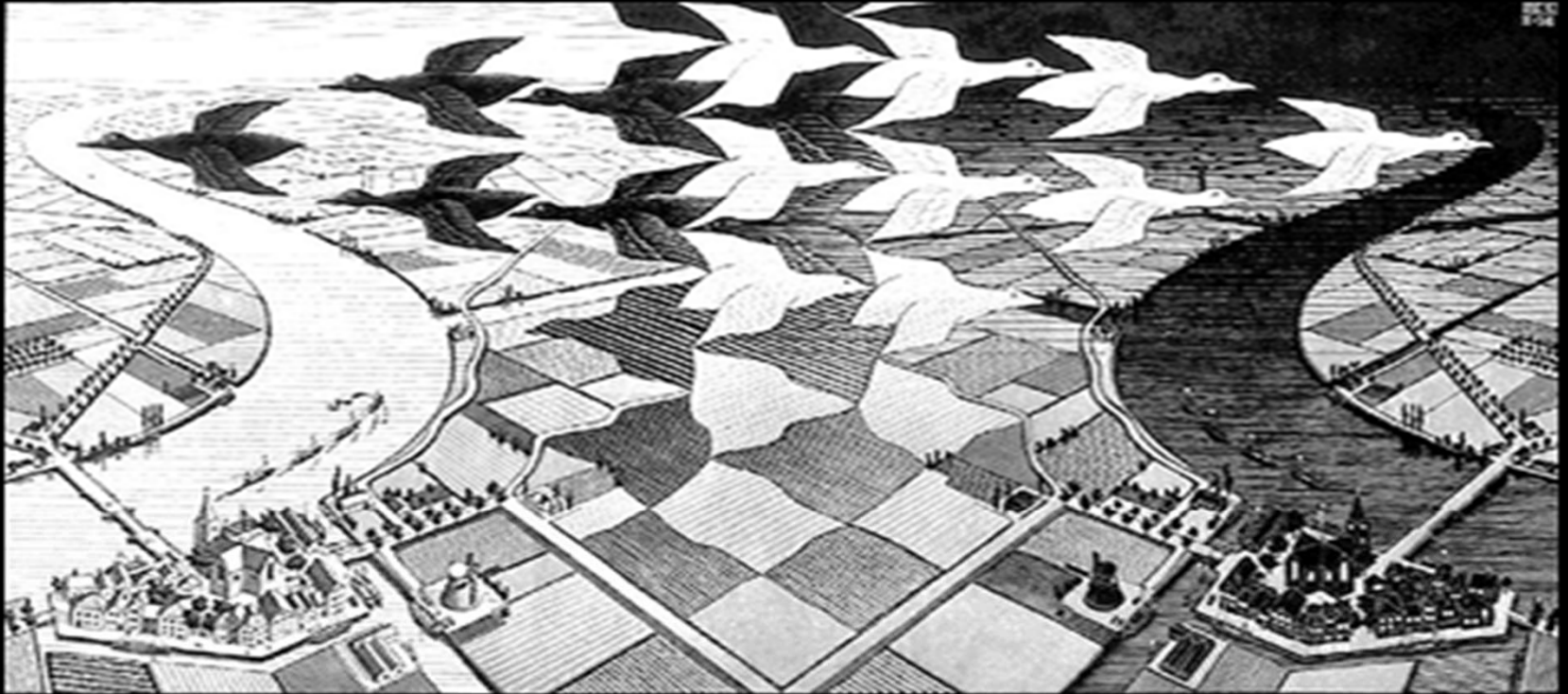
老子 《道德经》

*We pierce doors and windows to make a house; And  
it is on these spaces where there is nothing that the  
usefulness of the house depends.*

*Therefore just as we take advantage of what is, we  
should recognize the usefulness of what is not.*

*Lao Tzu, Tao Te Ching*

# 谢谢



Maurits Cornelis ESCHER (1899-1972). *Day and Night* (1938)

# Thank you